

**United States Department of Labor
Employees' Compensation Appeals Board**

B.M., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL AIR
STATION, Norfolk, VA, Employer**

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**Docket No. 06-1539
Issued: October 12, 2006**

Appearances:
David L. Boyd, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 23, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated April 10, 2006, denying her claim for an injury on September 13, 2004. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an aggravation of her reactive airway disease and toxic encephalopathy on September 13, 2004 in the performance of duty.

FACTUAL HISTORY

On September 30, 2004 appellant, then a 56-year-old supply technician, filed a recurrence of disability claim alleging that on September 13, 2004 she sustained an aggravation of a work-related reactive airway disease and toxic encephalopathy due to a chemical exposure at

work.¹ She stated that on September 13, 2004 old carpeting in an area adjacent to her office was being removed. Appellant smelled a strong chemical odor and began to feel sick. She experienced a burning sensation in her chest and throat, chest pain, a headache, dizziness, lightheadedness, memory impairment, reduced concentration, calf muscle pain and left leg twitching, nausea and weakness in her body. Appellant informed supervisor Carolyn Riddick that she was ill and was advised to submit a leave slip for 11:30 a.m. She was off work from September 13 through November 2, 2004.

In an employing establishment memorandum dated September 13, 2004, Ms. Riddick indicated that appellant reported being sick from chemical fumes in the building and had to leave work. Cathy Laughinghouse advised Ms. Riddick that old carpeting had been removed but installation of the new carpet had not begun and she did not smell any fumes. An investigative memorandum from Rick Paquin indicated that on September 13, 2004 a construction crew completed removal of the old carpet and pad which had not been installed with an adhesive. The adhesive containers for the new carpet were staged in the hall outside the women's restroom but remained sealed until the afternoon when the crew began fitting and installing the new carpet. On September 14, 2004 the construction crew completed installation of the new carpet. An adhesive material safety data sheet for the carpet adhesive indicated that there were no hazardous ingredients in the adhesive.

In a report and disability certificate dated September 14, 2004, Dr. Grace E. Ziem, a physician specializing in occupational and environmental health, indicated that appellant had experienced a serious exacerbation of a preexisting employment injury at work on September 13, 2004 due to a chemical exposure. She stated that the various offices in appellant's building shared a common ventilation system and chemical use anywhere in the building could adversely affect appellant. Appellant advised Dr. Ziem that she noticed a very strong smell shortly after 11:00 a.m. on September 13, 2004 and a supervisor advised her to leave the building due to illness. She had a rapid onset of severe neurotoxic and respiratory symptoms, including the symptoms as described above.

On May 4, 2005 the Office asked appellant to provide additional information to explain how her injury had occurred in light of the fact that no chemicals were used for carpet installation on September 13, 2004 until after she left the building and the fact that the chemicals in the carpet adhesive were not hazardous.

By decision dated June 13, 2005, the Office denied appellant's claim for an aggravation of her reactive airway disease and toxic encephalopathy on the grounds that the evidence was insufficient to establish that the September 13, 2004 incident occurred at the time, place and in the manner alleged.

On March 10, 2006 appellant requested reconsideration.

¹ The prior accepted injury was sustained on February 8, 2000.

By decision dated April 10, 2006, the Office denied modification of its June 13, 2005 decision.²

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden to establish the essential elements of her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁶ An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

ANALYSIS

Appellant alleged that she sustained an aggravation of her reactive airway disease and toxic encephalopathy due to a chemical exposure at work on September 13, 2004 at

² Appellant submitted additional evidence subsequent to the Office decision of April 10, 2006. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁷ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 6.

approximately 11:00 a.m. She stated that old carpeting was being removed near her office. Appellant smelled a strong chemical odor and immediately began to feel sick. She left work at 11:30 a.m.

Ms. Riddick indicated that during the morning of September 13, 2004 appellant reported being sick from chemical fumes in the building and left at 11:30 a.m. Ms. Laughinghouse advised Ms. Riddick that old carpeting had been removed that morning but installation of the new carpet had not begun. She did not smell any fumes. An investigative memorandum indicated that on September 13, 2004 a construction crew completed removal of the old carpet which had not been installed with an adhesive. The adhesive containers for the new carpet were located in the hall outside the women's restroom but remained sealed until the afternoon of September 13, 2004 when the crew began fitting and installing the new carpet. On September 14, 2004 the construction crew completed installation of the new padding and carpet. An adhesive material safety data sheet indicated that there were no hazardous ingredients in the carpet adhesive. The record indicates that the carpet adhesive containers to be used in installation of the new carpeting were not open at the time appellant alleged that she was exposed to chemicals, 11:00 a.m. The adhesive containers were not opened until the afternoon, after appellant left the building. The record also shows that no adhesive had been used in the installation of the old carpet. Therefore, her exposure to an adhesive chemical from the old carpeting is not established. There is no evidence that there was any hazardous substance in the fabric of the old or new carpets. There is no evidence, nor has appellant alleged, exposure to any other chemical at work on September 13, 2004. The Board finds that there is insufficient evidence that appellant was exposed to a chemical at the time, place and in the manner alleged. Therefore, she has not established the first component of fact of injury.

Moreover, the medical evidence does not establish that appellant sustained an injury in the performance of duty on September 13, 2004. Dr. Ziem stated that appellant had experienced a serious exacerbation of a preexisting respiratory injury on September 13, 2004 and was totally disabled. The history of the condition provided by Dr. Ziem was that appellant noticed a very strong smell shortly after 11:00 a.m. on September 13, 2004 and a supervisor advised her to leave the building due to illness. She had a rapid onset of severe neurotoxic and respiratory symptoms. However, as explained above, there is insufficient evidence to establish that appellant was exposed to a chemical at work on September 13, 2004. Medical opinions based on an incomplete or inaccurate history are of diminished probative value.⁸ Because Dr. Ziem based her opinion on an inaccurate factual background, it is not sufficient to establish that appellant sustained an injury on September 13, 2004 causally related to her federal employment.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an aggravation of her reactive airway disease and toxic encephalopathy on September 13, 2004 causally related to her employment.

⁸ *Douglas M. McQuaid*, 52 ECAB 382 (2001); *Patricia M. Mitchell*, 48 ECAB 371 (1997).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 10, 2006 is affirmed.

Issued: October 12, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board